

By Don Lee
Jackson

H.B. No. 749

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Approved lay midwifery training course" means a training course that satisfies the requirements established by the lay midwifery board and that is approved by the Texas Board of Health.

(2) "Certified nurse-midwife" means a person who is a registered nurse under the laws of this state and who is certified by the American College of Nurse-Midwives.

(3) "Department" means the Texas Department of Health.

(4) "Lay midwife" means a person who practices lay midwifery.

(5) "Lay midwifery" means the practice of assisting childbirth for compensation.

(6) "Normal childbirth" means the delivery, at or close to term, of a pregnant woman whose physical examination reveals no abnormality or signs or symptoms of complications.

(7) "Natural childbirth trainer" means a person who counsels expectant mothers in the techniques of giving birth without artificial or mechanical assistance, but does not assist at childbirth.

SECTION 2. EXCEPTIONS. This Act does not apply to a

1 certified nurse-midwife, a natural childbirth trainer, a physician,
2 a health care professional licensed by the state and operating
3 within the scope of his license, or a person other than a lay
4 midwife who assists childbirth in an emergency.

5 SECTION 3. LAY MIDWIFERY BOARD. The Texas Board of Health
6 shall appoint a lay midwifery board composed of:

7 (1) three lay midwives with at least three years of
8 experience in the practice of lay midwifery, no more than one of
9 whom may be a licensed health care professional;

10 (2) one certified nurse-midwife;

11 (3) a person licensed to practice medicine who is certified
12 by the American College of Obstetricians and Gynecologists;

13 (4) one person licensed to practice medicine who is
14 certified by the American Board of Pediatricians; and

15 (5) three persons who are not practicing or trained in a
16 health care profession and who represent the public interest.

17 SECTION 4. TERMS. The members of the lay midwifery board
18 hold office for staggered terms of six years, with the terms of
19 three members expiring on January 31 of each odd-numbered year.

20 SECTION 5. OFFICERS; QUORUM; MEETINGS. (a) The lay
21 midwifery board shall elect a chairman from one of the public
22 interest members and a vice-chairman from any of the other members.

23 (b) A majority of the members of the lay midwifery board
24 constitutes a quorum.

25 (c) The lay midwifery board shall meet at least once during
26 the first year of its existence and at other times at the call of
27 the Texas Board of Health.

1 SECTION 6. EXPENSES. Members may not receive compensation
2 for service on the lay midwifery board. Each member is entitled to
3 receive \$50 for each meeting that the member attends, and the per
4 diem and travel allowance authorized for state employees.

5 SECTION 7. EXECUTIVE SECRETARY; STAFF. (a) The department
6 shall hire an executive secretary, after consultation with the lay
7 midwifery board, to perform administrative duties, including
8 keeping the minutes of lay midwifery board meetings, maintaining
9 records about approved training courses, and maintaining records of
10 persons who have received a letter of completion as described in
11 this Act.

12 (b) The department shall pay the salaries of the executive
13 secretary and that of any additional staff it determines to be
14 necessary. The department shall provide office space and supplies
15 for the executive secretary and other staff.

16 SECTION 8. DUTIES AND POWERS OF THE LAY MIDWIFERY BOARD AND
17 THE TEXAS BOARD OF HEALTH. (a) Subject to the approval of the
18 Texas Board of Health, the lay midwifery board shall:

19 (1) establish requirements for an approved lay midwifery
20 training course;

21 (2) establish qualifications for the lay midwifery training
22 course instructors;

23 (3) issue a lay midwifery training manual;

24 (4) establish eligibility requirements for taking the final
25 examination of a training course; and

26 (5) issue a final examination for a lay midwifery training
27 course.

1 (b) The Texas Board of Health shall review and act on the
2 materials submitted by the lay midwifery board for approval not
3 later than the 60th day after the date on which they are submitted.
4 To implement this Act, the Texas Board of Health may adopt rules,
5 enter contracts, and prepare and publish reports on the practice of
6 lay midwifery in this state.

7 SECTION 9. MANUAL. (a) The lay midwifery board shall
8 approve a manual for the practice of lay midwifery. The department
9 shall provide the manual to any person who requests it. An
10 approved manual must include information about:

- 11 (1) prenatal care;
- 12 (2) normal childbirth;
- 13 (3) signs, symptoms, and emergency management of
14 complications that occur in childbirth;
- 15 (4) screening for women who are at greater risk of
16 childbirth complications;
- 17 (5) anatomy of the human reproduction system;
- 18 (6) sterile techniques and procedures;
- 19 (7) delivery techniques to prevent vaginal lacerations;
- 20 (8) emergency treatment of vaginal lacerations occurring
21 during childbirth;
- 22 (9) legal requirements and procedures for reporting births
23 and deaths;
- 24 (10) resuscitation of the newborn;
- 25 (11) prophylactic treatment, screening, and diagnostic tests
26 for newborns as required by law; and
- 27 (12) other information or procedures as determined by the

1 department.

2 (b) The department may charge a fee not to exceed \$10 for
3 each manual it distributes. The department shall make the manual
4 available in English and Spanish.

5 SECTION 10. TRAINING COURSE. (a) An approved lay midwifery
6 training course may be offered by a local health department, an
7 accredited postsecondary educational institution, or an adult
8 education program. The entity offering the course may charge a
9 reasonable fee for the course.

10 (b) If the department determines that the number of approved
11 courses offered in a region designated by the department is
12 insufficient to satisfy the demand for training in the region, the
13 department shall make a training course available on a temporary
14 basis through its regional office. The department may charge a fee
15 not to exceed \$50 for a training course it conducts. The
16 department may waive a portion of the fee charged to an individual.

17 (c) The training course shall be taught in Spanish if that
18 is the only language a participant of the course understands. If
19 other course participants do not understand Spanish, the training
20 course shall be taught in English and Spanish.

21 SECTION 11. EXAMINATION. (a) A person who has completed an
22 approved lay midwifery training course or who has comparable
23 training approved by the lay midwifery board is entitled to take
24 the final examination of the training course.

25 (b) An applicant for examination shall submit to the
26 department an application fee of \$25 and a completed application on
27 a form prescribed by the lay midwifery board.

1 (c) The department shall administer the final examination at
2 its regional or local offices.

3 (d) The examination shall be administered in English and
4 Spanish and may be offered in written or oral form.

5 SECTION 12. LETTER. The department shall grant a letter of
6 completion to a person who passes the final examination.

7 SECTION 13. IDENTIFICATION REQUIREMENT. (a) In December of
8 each year, a person who practices lay midwifery shall identify
9 himself as a lay midwife by appearing in person before the county
10 clerk of the county in which the person resides or before the
11 county clerk of each county in which the person practices lay
12 midwifery and delivering to the county clerk a verified
13 identification form that contains:

14 (1) the person's name, residence, and post office address;

15 (2) the person's date and place of birth;

16 (3) the location of the person's practice according to
17 counties; and

18 (4) other information the department determines necessary
19 for the identification of lay midwives.

20 (b) The identification form shall be prescribed by the
21 department.

22 (c) The county clerk shall provide each lay midwife who
23 identifies himself a notice of a lay midwife's legal
24 responsibilities under the laws and rules of this state on a form
25 prescribed by the department. Failure to receive the notice does
26 not constitute a defense to prosecution for acts committed in
27 violation of the laws and rules of this state.

1 (d) The county clerk shall retain for the county clerk's
2 records a copy of each identification form. The county clerk shall
3 send the original identification form to the department. The
4 county clerk may charge a reasonable fee for these services under
5 Article 3930, Revised Statutes.

6 SECTION 14. ADDITIONAL INFORMATION. (a) The department may
7 require information in addition to that required by Section 13(a)
8 if it determines the additional information is necessary and
9 appropriate to ascertain the nature and extent of lay midwifery in
10 this state. The department may not require information regarding
11 any act that is prohibited under this Act.

12 (b) Information received under this section may not be made
13 public so as to disclose the identity of any person to whom the
14 information relates. This information is not a public record as
15 defined in Chapter 424, Acts of the 63rd Legislature, Regular
16 Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

17 (c) The department shall prescribe forms for the additional
18 information and shall distribute those forms to the county clerks
19 of this state.

20 (d) When a person identifies himself as a lay midwife under
21 Section 13 of this Act, the county clerk shall give a copy of any
22 form for additional information to the person. The person shall
23 complete the form and return it with the identification form to the
24 county clerk.

25 (e) The county clerk shall send these forms to the
26 department.

27 SECTION 15. ROSTER. (a) The department shall maintain a

1 roster of all persons identified to practice lay midwifery.

2 (b) The roster shall contain for each person the information
3 required on the identification form of this Act and other
4 information that the department determines necessary to identify
5 with accuracy each lay midwife who is identified under this Act.
6 This information shall be a public record as defined in Chapter
7 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article
8 6252-17a, Vernon's Texas Civil Statutes).

9 SECTION 16. DUTIES OF LAY MIDWIVES; DISCLOSURE REQUIREMENT.

10 (a) Each lay midwife shall disclose in oral and written form to a
11 prospective client the limitations of the skills and practices of a
12 lay midwife.

13 (b) The department, with the advice of the lay midwifery
14 board, shall prescribe the form of the written disclosure required
15 by this section, which shall include the information that a lay
16 midwife:

17 (1) may assist only in normal childbirth;

18 (2) has or does not have an arrangement with a local
19 physician for referring patients who have complications that occur
20 before or during childbirth;

21 (3) may not administer a prescription drug without a
22 physician's supervision, perform a Caesarean section, or perform an
23 episiotomy; and

24 (4) has or has not passed the lay midwife training course
25 final examination approved by the board.

26 (c) The written disclosure required by this section may not
27 exceed 500 words and must be in English and Spanish.

1 (d) A lay midwife shall have each client sign a written
2 disclosure form, and shall send the form to the department not
3 later than the 30th day after the date of the birth.

4 (e) A lay midwife shall encourage a client to seek prenatal
5 care.

6 (f) A lay midwife shall encourage a client to seek medical
7 care if the lay midwife recognizes a sign or symptom of a
8 complication to the client's childbirth.

9 SECTION 17. PROHIBITED ACTS. A lay midwife may not:

10 (1) administer a prescription drug to a client except under
11 the supervision of a licensed physician in accordance with the laws
12 of this state;

13 (2) use forceps or surgical instruments for any procedure
14 other than cutting the umbilical cord or providing emergency first
15 aid during delivery;

16 (3) remove placenta by invasive techniques;

17 (4) advance or retard labor or delivery by using medicines
18 or mechanical devices;

19 (5) use in connection with his name a title, abbreviation,
20 or any designation tending to imply that he is a "registered" or
21 "certified" lay midwife as opposed to one who has identified
22 himself in compliance with this Act; or

23 (6) assist at childbirth other than a normal childbirth
24 except in an emergency situation that poses an immediate threat to
25 the life of the mother or newborn.

26 SECTION 18. PENALTIES. (a) A lay midwife commits an
27 offense if the lay midwife knowingly or intentionally commits an

1 act prohibited by this Act.

2 (b) An offense under this section is a Class C misdemeanor.

3 (c) A lay midwife who knowingly or intentionally fails to
4 comply with the disclosure requirement of this Act commits a Class
5 C misdemeanor.

6 (d) A lay midwife who knowingly or intentionally fails to
7 comply with the identification requirement of this Act commits a
8 Class C misdemeanor.

9 SECTION 19. EFFECT ON LOCAL ORDINANCES. This Act does not
10 prohibit an incorporated city or town from adopting a local
11 ordinance to regulate the practice of lay midwifery within its
12 corporate limits if the ordinance is at least as strict as this
13 Act.

14 SECTION 20. FUNDS. All fees received by the department
15 under this Act shall be deposited in the state treasury to the
16 credit of the general revenue fund and shall be appropriated to the
17 department to defray the costs of this Act.

18 SECTION 21. REPEALER. Section 16, Chapter 41, Acts of the
19 40th Legislature, 1st Called Session, 1927 (Rule 49a, Article 4477,
20 Vernon's Texas Civil Statutes), is repealed.

21 SECTION 22. INITIAL APPOINTMENTS. In making the initial
22 appointments to the lay midwifery board, the Texas Board of Health
23 shall designate one lay midwife, one public interest
24 representative, and the obstetrician for terms expiring January 31,
25 1985, one lay midwife, one public interest representative, and the
26 certified nurse-midwife for terms expiring January 31, 1987, and
27 one lay midwife, one public interest representative, and the

1 pediatrician for terms expiring January 31, 1989.

2 SECTION 23. REPORT. The department shall study the practice
3 of lay midwifery in the state, including the quality of the
4 services provided by lay midwives and the efficacy of the training
5 program, disclosure requirements, and prohibitions established in
6 this Act. The department shall report the results of this study to
7 the regular session of the 71st Legislature. In the report, the
8 department shall analyze the training program, and shall recommend
9 that the program be:

- 10 (1) continued as enacted;
11 (2) continued with amendments;
12 (3) made mandatory; or
13 (4) discontinued.

14 SECTION 24. EFFECTIVE DATE. (a) Except as provided by
15 Subsection (b) of this section, this Act takes effect September 1,
16 1983.

17 (b) Sections 16(a), 17, and 18 of this Act take effect on
18 September 1, 1984.

19 SECTION 25. EMERGENCY. The importance of this legislation
20 and the crowded condition of the calendars in both houses create an
21 emergency and an imperative public necessity that the
22 constitutional rule requiring bills to be read on three several
23 days in each house be suspended, and this rule is hereby suspended.

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FEB 10 1983

1. Filed with the Chief Clerk.

FEB 24 1983

2. Read first time and Referred to Committee on

Public Health

3. Reported favorably (as amended) and sent to Printer at _____
(as substituted)

4. Printed and distributed at _____

5. Sent to Committee on Calendars at _____

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of _____ yeas, _____ nays, _____
present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas,
_____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed
to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____
present, not voting).

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote
of _____ yeas, _____ nays, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed
prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____
nays, and _____ present, not voting).

12. Ordered Engrossed at _____

13. Engrossed.

14. Returned to Chief Clerk at _____

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read
first time.

20. Ordered not printed.

21. Regular order of business suspended by
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments)
(Substitute) by a (Non-Record
Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____